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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LOCAL 338, RWDSU

Plaintiff,

-vs-

FOODTOWN/PSK SUPERMARKETS, INC.

Defendant,

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CASE NO. 07-cv-2824 (LBS)

**ANSWER OF DEFENDANT  
PSK SUPERMARKET, INC.**

**Electronically Filed Documents**

Defendant PSK Supermarkets, Inc. (incorrectly plead by “Foodtown/PSK Supermarkets, Inc.”) (hereinafter referred to as “Defendant”), by and through its counsel Fox Rothschild LLP, states in answer to the Complaint as follows:

**AS TO JURISDICTION**

1. Defendant states that paragraph 1 of the Complaint cannot be averred or denied at this time because it is a conclusion of law subject to the determination by this Court

**AS TO VENUE**

2. Defendant states that paragraph 2 of the Complaint cannot be averred or denied at this time because it is a conclusion of law subject to the determination by this Court.

**AS TO PARTIES**

3. Defendant denies for want of knowledge the allegations in paragraph 3 of the Complaint.

4. Defendant admits the allegations of paragraph 4 of the Complaint.

**AS TO THE FACTUAL ALLEGATIONS**

5. Defendant denies the allegations of paragraph 5 of the Complaint except to admit that it has been a party to a series of collective bargaining agreements with Plaintiff, the most recent of which commenced August 8, 2002.

6. Defendant avers that the document referred to in paragraph 6 of the Complaint speaks for itself.

7. Defendant avers that the document referred to in paragraph 7 of the Complaint speaks for itself.

8. Defendant avers that the document referred to in paragraph 8 of the Complaint speaks for itself.

9. Defendant admits the allegations contained in paragraph 9 of the Complaint.

10. Defendant admits the allegations contained in paragraph 10 of the Complaint.

11. Defendant admits the allegations contained in paragraph 11 of the Complaint.

12. Defendant avers that the document referred to in paragraph 12 of the Complaint speaks for itself.

13. Defendant avers that the document referred to in paragraph 13 of the Complaint speaks for itself.

14. Defendant avers that the document referred to in paragraph 14 of the Complaint speaks for itself.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint.
16. Defendant denies the allegations contained in paragraph 16 of the Complaint.
17. Defendant denies the allegations contained in paragraph 17 of the Complaint.
18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Some or all of Plaintiff claims are barred by the doctrines of laches and estoppel.

#### **THIRD AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which an award of attorney's fees can be granted.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' damages, if any, are the result of the actions, inactions and/or omissions of individuals or entities over which Answering Defendant has no control.

#### **ADDITIONAL DEFENSES RESERVED**

Defendant specifically reserves the right to amend, modify and supplement these Affirmative Defenses as discovery is completed in this action.

WHEREFORE, Defendant PSK Supermarkets, Inc. requests judgment dismissing the Complaint against it with prejudice, together with its attorneys' fees and costs of suit, and for any other relief deemed appropriate and equitable by this Court.

Respectfully submitted,

FOX ROTHSCHILD LLP  
Attorneys for Defendant PSK Supermarkets, Inc.

By: s/Heather R. Boshak  
Heather R. Boshak (HRB/9736)

Dated: April 27, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2007, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

Elise S. Feldman  
Friedman & Wolf  
1500 Broadway  
New York, NY 10036  
(Via ECF and prepaid U.S. Mail)

Dated: April 27, 2007

s/Heather R. Boshak

Heather R. Boshak (HRB/9736)